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**2. Intoxicating Liquors (§ 236 (5\*))—Statutory Presumption from Finding of Liquor as against Occupant Construed.**—Acts 1918, c. 388, § 28, making the finding of ardent spirits on premises prima facie evidence of a violation of law by the persons occupying the premises, refers to the person in charge of the premises.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 35.]

**3. Intoxicating Liquors (§ 236 (5\*))—Statutory Presumption from Finding of Liquor Applies against Husband, and Not against Wife.**—The changes in the laws respecting marital rights have not destroyed the theoretical status of the husband as the head of the family, and, in the absence of proof to the contrary, he, and not the wife, is to be regarded as the person in charge of the family home within Acts 1918, c. 388, § 28, making the finding of ardent spirits on premises prima facie evidence of violation by the person in charge, or an ordinance to the same effect.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 228.]

**4. Husband and Wife (§ 107\*)—Husband and Wife May Be Jointly Convicted.**—A husband and wife may be jointly charged and convicted for selling whisky.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 228.]

**5. Husband and Wife (§ 108\*)—Wife Cannot Escape Criminal Liability Because of Marriage.**—A married woman cannot excuse herself from guilt on a criminal charge by showing the marriage, and pleading a consequent technical coercion by the husband.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 228.]

Error to Circuit Court, Wise County.

Edna Wampler and Henry Wampler were convicted of keeping ardent spirits for sale, and they bring error. Affirmed as to defendant Henry Wampler, and reversed as to defendant Edna Wampler.

*D. F. Kennedy*, of Wise, for plaintiffs in error.

*John Roberts*, of Norton, for defendant in error.

#### SPRADLIN *v.* CITY OF ROANOKE.

Sept. 21, 1922.

[113 S. E. 732.]

**1. Indictment and Information (§ 132 (8\*))—Discretionary with Court Whether to Require State to Elect.**—On a trial under a warrant charging defendant with selling, transporting, storing, and having possession of ardent spirits, it was in the sound discretion of the trial court to grant or refuse a motion to require the city to elect upon which charge it would ask a conviction.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 30.]

**2. Indictment and Information (§ 196 (7\*))—Right to Require Elec-**

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**tion Waived by Failure to Demand It.**—If accused, prosecuted for selling, transporting, etc., ardent spirits, had a right to require the city to elect, he waived it by failing to demand it in the trial court.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 30.]

**3. Intoxicating Liquors (§ 236 (5)\*)—Possession Need Not Be Actual and Exclusive to Create Presumption of Violation.**—Under Acts 1918, c. 388, § 28, providing that the finding of ardent spirits in any room, building, etc., shall be prima facie evidence of a violation by the person or persons occupying the premises, the liquor need not be in defendant's actual and exclusive possession to create the presumption.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 34.]

**4. Intoxicating Liquors (§ 236 (5)\*)—Finding of Whisky Held to Warrant Verdict for Possessing.**—On a trial for possessing, etc., ardent spirits in violation of a city ordinance where it appeared without conflict that whisky was found in a poolroom occupied by defendant, the statutory presumption under Acts 1918, c. 388, § 28, warranted the jury in finding him guilty without further testimony.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 35.]

**5. Criminal Law (§ 815 (4)\*)—Instruction Properly Refused as Ignoring Testimony as to Sale of Liquor.**—Instructions that burden was on the commonwealth to prove by clear, distinct, and reliable evidence, and beyond a reasonable doubt, defendant's actual and exclusive possession of liquor found on his premises, and that, if the jury had a reasonable doubt as to such possession, it would be their duty to find him not guilty, was properly refused as overlooking positive testimony that a witness had purchased liquor from defendant; the warrant charging an unlawful sale as well as possession.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 34.]

**6. Intoxicating Liquors (§ 236 (6½)\*)—Evidence Sufficient to Support Conviction of Possessing and Selling.**—Evidence on a trial for possessing and selling liquor held sufficient to sustain a verdict finding defendant guilty.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 34.]

**7. Criminal Law (§ 742 (3)\*)—Credibility of Witnesses and Weight of Testimony for Jury.**—The credibility of the witnesses and the weight of their testimony were questions for the jury, notwithstanding an attempt to impeach the reputation of a witness for truth and veracity.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 73.]

Error to Corporation Court of Roanoke.

James W. Spradlin was convicted of an offense, and he brings error. Affirmed.

*John G. Challice*, of Roanoke, for plaintiff in error.

*R. C. Jackson*, of Roanoke, and *Samuel R. Price*, for defendant in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.